



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 04/17/2003 (Per: GMM)



☞ The drafting file for 2001 LRB -4738

has been transferred to the drafting file for

2003 LRB -2550

☞ This cover sheet, the final request sheet, and the final version of the 2001 draft were copied on yellow paper, and returned to the original 2001 drafting file.

☞ The attached 2001 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2001 DRAFTING REQUEST**Bill**Received: **01/18/2002**Received By: **malaigm**Wanted: **As time permits**

Identical to LRB:

For: **DuWayne Johnsrud (608) 266-3534**By/Representing: **Larry Konapacki**This file may be shown to any legislator: **NO**Drafter: **malaigm**

May Contact:

Addl. Drafters:

Subject: **Discrimination - employment**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Johnsrud@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Filing deadline for employment discrimination complaints and just cause for terminating employee over 40

Instructions:

See Attached--1, Provide that starting point for measuring 300-day period for filing employment discrimination complaint begins on day employee is terminated or on last day employee works, not on day on which employee learns he or she is terminated. 2. Prohibit employer from terminating employee 40 or over without just cause.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	malaigm 01/31/2002	csicilia 02/13/2002		_____			S&L
/1			kfollet	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			02/13/2002	_____	02/13/2002	02/25/2002	
				_____	lrb_docadmin		
				_____	02/25/2002		

FE Sent For:

<END>

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/1			kfollet		lrb_docadmin		

02/25/2002 01:33:21 PM

Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

02/13/2002 _____

02/13/2002
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 02/25/2002

FE Sent For:

<END>

via email
 by request
 (m) 2/25

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1?	malaigm	 2-1-2	Kjl 2/13	Kjl/ps 2/13			

FE Sent For: 1/1 cjs 2/13
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REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

GMM

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep. Johnson

Date: 1/15/02 Person submitting request (name, phone number): Larry Konopaeki 6-3534

Persons to contact for questions about this draft (names, phone numbers): Larry 6-3534

Describe the problem, including any helpful examples.

How do you want to solve the problem?

Please draft legislation to require that the 300-day period during which an employee can file a complaint with the Equal Rights Division begin after the last day a person actually works in the position, not beginning when a person finds out they are terminated, unless that is the same day. Please contact us to let us know who will be drafting this. Thank you!

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy.

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? ☐ Yes ☒ No
- If yes: Anyone who asks? ☐ Yes ☐ No Any legislator? ☐ Yes ☐ No Only the following persons: _____

Do you consider this request urgent? ☐ Yes ☐ No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? ☐ Yes ☐ No If yes, sign your name here: _____

Yes No

B I L L
REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

GMM

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for BILL drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: Rep. Johnson

Date: 1/15/02 Person submitting request (name, phone number): Larry Karopacki - 6-3534

Persons to contact for questions about this draft (names, phone numbers): Larry Karopacki - 6-3534

Describe the problem, including any helpful examples.

How do you want to solve the problem?

Please draft legislation to require an employer to show "just-cause" when firing an employee over the age of 40 (or 40 & above) ← make similar to current protected class. Thank you

Please contact us to let us know who will be drafting this. Thanks.

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy. _____

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Do you consider this request urgent? ☐ Yes ☐ No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? ☐ ☐ If yes, sign your name here: _____

Yes No



State of Wisconsin
2001-2002 LEGISLATURE

LRB-4738/? 2

GMM:.....

63/

\$ cjs

TODAY

D-NOTE

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AN ACT ...; relating to: prohibiting an employer from terminating the employment of an employee who is 40 years of age or over without just cause and the time within which an employment discrimination complaint in which the act charged is termination of employment must be filed.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, the employer-employee relationship is governed by the employment-at-will doctrine, under which an employer may discharge an employee "for good cause, for no cause, or even for a cause morally wrong, without being thereby guilty of a legal wrong." *Hauseman v. St. Croix Care Center*, 214 Wis. 2d 655 (1997). Currently, one of the exceptions to the employment-at-will doctrine is the fair employment law, which prohibits discrimination on various bases including discrimination on the basis of age against a person 40 years of age or over. This bill specifies that employment discrimination because of age includes terminating the employment of an employee who is 40 years of age or over without just cause.

The bill provides, however, that it is not employment discrimination because of age to terminate the employment of an employee because of misconduct, malfeasance, inefficiency, or neglect of duty connected with the employee's employment or to lay off an employee due to a work stoppage or a lack of work or funds or due to any conditions in which continuation of the employee's employment would be inefficient or nonproductive. In addition, the bill excludes from its coverage temporary employees, probationary employees, employees covered by a collective bargaining agreement that prohibits termination of employment without just cause, public officers who are appointed to serve at the pleasure of the appointing authority,

and state and local government employees, such as University of Wisconsin System faculty and academic staff, law enforcement officers, and employees covered under a civil service system, for whom termination of employment for cause is already governed under procedures specified under current law.

Under current law, the department of workforce development (DWD) or, in the case of a state employee, the personnel commission may receive and investigate a complaint charging discrimination in employment if the complaint is filed with DWD or the personnel commission no more than 300 days after the alleged discrimination occurred. In cases in which the act of discrimination charged is termination of employment, the date on which the alleged discrimination occurred is considered to be the date on which the employee was notified of the termination and not the date on which the termination took effect. *Hilmes v. DILHR*, 147 Wis. 2d 48 (Ct. App 1988). This bill permits DWD or the personnel commission to receive and investigate a complaint in which the act of discrimination charged is termination of employment if the complaint is filed with DWD or the personnel commission no more than 300 days after the date on which the employer notified the employee of the termination or the date on which the termination took effect, whichever is later.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.33 (1m) of the statutes is created to read: ✓

111.33 (1m) (a) In this subsection: ✓

1. "Probationary period" means, in the case of an employee who is required under a civil service system or a collective bargaining agreement to serve a probationary period on original appointment, the probationary period that the employee is required to serve under that system or agreement before achieving permanent status or, in the case of an employee other than an employee who is required under a civil service system or a collective bargaining agreement to serve a probationary period on original appointment, a reasonable probationary period established by the employer that is no longer than necessary to ensure that the employee has the knowledge, skills, and abilities to competently perform the required tasks of the employee's position. ✓

2. "Temporary employee" means an employee who is employed for a brief, nonrecurrent period with no reasonable expectation that the employee's position will continue indefinitely or for a significant period of time.

(b) Subject to par. (c) and sub. (2) (a), employment discrimination because of age includes terminating the employment of an employee who is age 40 or over without just cause.

(c) Paragraph (b) does not apply to a temporary employee, an employee serving a probationary period, an employee who is covered under a collective bargaining agreement that prohibits termination of employment without just cause, a public officer who is appointed to serve at the pleasure of the appointing authority, or an employee of the state or of a local governmental unit for whom termination of employment for cause is governed by the procedures specified in s. 17.14, 17.16 (3), 21.28 (3), 21.37, 36.13 (5), ~~36.15~~ 36.15 (3), 59.26 (8) (b), 59.52 (8), 60.56 (1) (am), 61.65 (1) (am), 62.13 (5) or (6m), 62.50 (11) to (22), 63.10, 63.43, 63.44, 66.0509, 118.22, 118.23, 119.42, or 230.44 (1) (c).

SECTION 2. 111.33 (2) (intro.) of the statutes is amended to read:

111.33 (2) (intro.) Notwithstanding sub. ~~sub.~~ (1) and (1m) and s. 111.322, it is not employment discrimination because of age to do any of the following:

~~History: 1981 s. 334, 1983 s. 391, 553.~~

SECTION 3. 111.33 (2) (a) of the statutes is amended to read:

111.33 (2) (a) To terminate the employment of any employee because the employee is physically or otherwise unable to perform his or her duties or because of misconduct, malfeasance, inefficiency, or neglect of duty connected with the employee's employment or to lay off any employee due to a work stoppage or a lack

of work or funds or due to any conditions in which continuation of the employee's employment would be inefficient or nonproductive.

~~History: 1981 c. 334; 1983 a. 391, 538.~~

SECTION 4. 111.39 (1) of the statutes is amended to read:

111.39 (1) The Except as provided in this ~~paragraph~~ subsection, the department may receive and investigate a complaint charging discrimination, discriminatory practices, unfair honesty testing, or unfair genetic testing in a particular case if the complaint is filed with the department no more than 300 days after the date on which the alleged discrimination, discriminatory practice, unfair honesty testing, or unfair genetic testing occurred. The department may receive and investigate a complaint in which the act charged is termination of employment if the complaint is filed with the department no more than 300 days after the date on which the employer notified the employee of the termination or the date on which the termination took effect, whichever is later. The department may give publicity to its findings in the case.

~~History: 1978 c. 268; 1977 c. 23, 196, 1979 c. 221, 319, 355; 1981 c. 334 ss. 20, 25 (2); State 1981 s. 111.39; 1983 a. 122; 1989 a. 228; 1991 a. 117; 1995~~

SECTION 5. 230.44 (3) of the statutes is amended to read:

230.44 (3) TIME LIMITS. ~~Any~~ Except as provided in this subsection, any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later, except that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred, except that if the act alleged is termination of employment, the time limit for that part of the appeal alleging that act shall be 300 days after the date on which the appointing

authority notified the employee of the termination or the date on which the termination took effect, whichever is later.

~~History: 1977 c. 196; 1979 c. 221; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 307; 1999 a. 102.~~

SECTION 6. Initial applicability.

(1) FILING OF EMPLOYMENT DISCRIMINATION COMPLAINTS. This act first applies to an employee who is notified on the effective date of this subsection that his or her employment is being terminated.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4738/1dn

GMM:.....

13

Date

Representative Johnsrud:

The draft is a bit more involved than simply prohibiting an employer from terminating an employee 40 years of age or over without just cause. Specifically:

1. The draft does not apply to a temporary employee because a temporary employee understands when he or she is hired that the job will not last forever.

2. The draft also does not apply to a probationary employee because current s. 230.44 (1) (c) under which a state employee may be terminated only for just cause does not apply until the employee has passed his or her probationary period. As such, it would conflict with current law to say that a probationary employee 40 years of age or over may only be terminated for just cause. ✓

3. Similarly, numerous statutes provide for various appointed public officers to serve at the pleasure of the appointing authority. Again, it would conflict with current law to provide that a public officer 40 years of age or over who is serving at the pleasure of the person who appointed him or her may be terminated only for just cause. ✓

4. In addition, the draft excludes from its coverage an employee who is covered under a collective bargaining agreement or a civil service system that already protects the employee from termination without just cause because procedures are already in place for such an employee to grieve his or her termination. ✓

5. Finally, the draft spells out a few scenarios that would constitute just cause for termination, specifically, misconduct, malfeasance, inefficiency, or neglect of duty or a layoff due to a work stoppage or a lack of work ^{of} funds or due to any condition in which continuation of employment would be inefficient or nonproductive. See, e.g., ss. 17.016 (2) and 111.90 (3). *

If you would like to discuss the draft or any of the points raised in this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below. ✓

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4738/1dn
GMM:rs&cjs:kjf

February 13, 2002

Representative Johnsrud:

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3. Similarly, numerous statutes provide for various appointed public officers to serve at the pleasure of the appointing authority. Again, it would conflict with current law to provide that a public officer 40 years of age or over who is serving at the pleasure of the person who appointed him or her may be terminated only for just cause.
4. In addition, the draft excludes from its coverage an employee who is covered under a collective bargaining agreement or a civil service system that already protects the employee from termination without just cause because procedures are already in place for such an employee to grieve his or her termination.
5. Finally, the draft spells out a few scenarios that would constitute just cause for termination, specifically, misconduct, malfeasance, inefficiency, or neglect of duty or a layoff due to a work stoppage or a lack of work or funds or due to any condition in which continuation of employment would be inefficient or nonproductive. See, e.g., ss. 17.16 (2) and 111.90 (3).

If you would like to discuss the draft or any of the points raised in this drafter's note, please do not hesitate to contact me directly at the phone number or e-mail address listed below.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Beam, Laura

From: Konopacki, Larry
Sent: Monday, February 25, 2002 1:56 PM
To: LRB.Legal
Subject: Draft review: LRB-4738/1 Topic: Filing deadline for employment discrimination complaints and just cause for terminating employee over 40

It has been requested by <Konopacki, Larry> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB-4738/1 Topic: Filing deadline for employment discrimination complaints and just cause for terminating employee over 40



2001 BILL

1 **AN ACT** *to amend* 111.33 (2) (intro.), 111.33 (2) (a), 111.39 (1) and 230.44 (3); and
2 *to create* 111.33 (1m) of the statutes; **relating to:** prohibiting an employer
3 from terminating the employment of an employee who is 40 years of age or over
4 without just cause and the time within which an employment discrimination
5 complaint in which the act charged is termination of employment must be filed.

Analysis by the Legislative Reference Bureau

Under current law, subject to certain exceptions, the employer-employee relationship is governed by the employment-at-will doctrine, under which an employer may discharge an employee "for good cause, for no cause, or even for a cause morally wrong, without being thereby guilty of a legal wrong." *Hauseman v. St. Croix Care Center*, 214 Wis. 2d 655 (1997). Currently, one of the exceptions to the employment-at-will doctrine is the fair employment law, which prohibits discrimination on various bases including discrimination on the basis of age against a person 40 years of age or over. This bill specifies that employment discrimination because of age includes terminating the employment of an employee who is 40 years of age or over without just cause.

The bill provides, however, that it is not employment discrimination because of age to terminate the employment of an employee because of misconduct, malfeasance, inefficiency, or neglect of duty connected with the employee's employment or to lay off an employee due to a work stoppage or a lack of work or funds or due to any conditions in which continuation of the employee's employment

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would be inefficient or nonproductive. In addition, the bill excludes from its coverage temporary employees, probationary employees, employees covered by a collective bargaining agreement that prohibits termination of employment without just cause, public officers who are appointed to serve at the pleasure of the appointing authority, and state and local government employees, such as University of Wisconsin System faculty and academic staff, law enforcement officers, and employees covered under a civil service system, for whom termination of employment for cause is already governed under procedures specified under current law.

Under current law, the department of workforce development (DWD) or, in the case of a state employee, the personnel commission may receive and investigate a complaint charging discrimination in employment if the complaint is filed with DWD or the personnel commission no more than 300 days after the alleged discrimination occurred. In cases in which the act of discrimination charged is termination of employment, the date on which the alleged discrimination occurred is considered to be the date on which the employee was notified of the termination and not the date on which the termination took effect. *Hilmes v. DILHR*, 147 Wis. 2d 48 (Ct. App 1988). This bill permits DWD or the personnel commission to receive and investigate a complaint in which the act of discrimination charged is termination of employment if the complaint is filed with DWD or the personnel commission no more than 300 days after the date on which the employer notified the employee of the termination or the date on which the termination took effect, whichever is later.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.33 (1m) of the statutes is created to read:

2 **111.33 (1m)** (a) In this subsection:

3 1. "Probationary period" means, in the case of an employee who is required
4 under a civil service system or a collective bargaining agreement to serve a
5 probationary period on original appointment, the probationary period that the
6 employee is required to serve under that system or agreement before achieving
7 permanent status or, in the case of an employee other than an employee who is
8 required under a civil service system or a collective bargaining agreement to serve
9 a probationary period on original appointment, a reasonable probationary period
10 established by the employer that is no longer than necessary to ensure that the

BILL

1 employee has the knowledge, skills, and abilities to competently perform the
2 required tasks of the employee's position.

3 2. "Temporary employee" means an employee who is employed for a brief,
4 nonrecurrent period with no reasonable expectation that the employee's position will
5 continue indefinitely or for a significant period of time.

6 (b) Subject to par. (c) and sub. (2) (a), employment discrimination because of age
7 includes terminating the employment of an employee who is age 40 or over without
8 just cause.

9 (c) Paragraph (b) does not apply to a temporary employee, an employee serving
10 a probationary period, an employee who is covered under a collective bargaining
11 agreement that prohibits termination of employment without just cause, a public
12 officer who is appointed to serve at the pleasure of the appointing authority, or an
13 employee of the state or of a local governmental unit for whom termination of
14 employment for cause is governed by the procedures specified in s. 17.14, 17.16 (3),
15 21.28 (3), 21.37, 36.13 (5), 36.15 (3), 59.26 (8) (b), 59.52 (8), 60.56 (1) (am), 61.65 (1)
16 (am), 62.13 (5) or (6m), 62.50 (11) to (22), 63.10, 63.43, 63.44, 66.0509, 118.22, 118.23,
17 119.42, or 230.44 (1) (c).

18 **SECTION 2.** 111.33 (2) (intro.) of the statutes is amended to read:

19 111.33 (2) (intro.) Notwithstanding sub. subs. (1) and (1m) and s. 111.322, it is
20 not employment discrimination because of age to do any of the following:

21 **SECTION 3.** 111.33 (2) (a) of the statutes is amended to read:

22 111.33 (2) (a) To terminate the employment of any employee because the
23 employee is physically or otherwise unable to perform his or her duties or because
24 of misconduct, malfeasance, inefficiency, or neglect of duty connected with the
25 employee's employment or to lay off any employee due to a work stoppage or a lack

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1 of work or funds or due to any conditions in which continuation of the employee's
2 employment would be inefficient or nonproductive.

3 **SECTION 4.** 111.39 (1) of the statutes is amended to read:

4 111.39 (1) The Except as provided in this subsection, the department may
5 receive and investigate a complaint charging discrimination, discriminatory
6 practices, unfair honesty testing, or unfair genetic testing in a particular case if the
7 complaint is filed with the department no more than 300 days after the date on which
8 the alleged discrimination, discriminatory practice, unfair honesty testing, or unfair
9 genetic testing occurred. The department may receive and investigate a complaint
10 in which the act charged is termination of employment if the complaint is filed with
11 the department no more than 300 days after the date on which the employer notified
12 the employee of the termination or the date on which the termination took effect,
13 whichever is later. The department may give publicity to its findings in the case.

14 **SECTION 5.** 230.44 (3) of the statutes is amended to read:

15 230.44 (3) TIME LIMITS. Any Except as provided in this subsection, any appeal
16 filed under this section may not be heard unless the appeal is filed within 30 days
17 after the effective date of the action, or within 30 days after the appellant is notified
18 of the action, whichever is later, ~~except that if.~~ If the appeal alleges discrimination
19 under subch. II of ch. 111, the time limit for that part of the appeal alleging such
20 discrimination shall be 300 days after the alleged discrimination occurred, except
21 that if the act alleged is termination of employment, the time limit for that part of
22 the appeal alleging that act shall be 300 days after the date on which the appointing
23 authority notified the employee of the termination or the date on which the
24 termination took effect, whichever is later.

25 **SECTION 6. Initial applicability.**

BILL

1 (1) FILING OF EMPLOYMENT DISCRIMINATION COMPLAINTS. This act first applies to
2 an employee who is notified on the effective date of this subsection that his or her
3 employment is being terminated.

4 **(END)**